

except that such certification may be terminated at any time, for purposes of either or both of those years, upon a finding that the actions of such agency have not remained in conformance with applicable requirements.

(C) Any certification or decertification under this subsection shall be made by the Office of Personnel Management, with the concurrence of the Office of Management and Budget.

(4) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection with respect to employees within the judicial branch shall be the responsibility of the Director of the Administrative Office of the United States Courts. However, the regulations under this paragraph shall be consistent with those promulgated under paragraph (3).

(Added Pub. L. 91-656, §3(a), Jan. 8, 1971, 84 Stat. 1950; amended Pub. L. 97-258, §3(a)(10), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 101-509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1438; Pub. L. 102-77, §2, July 26, 1991, 105 Stat. 369; Pub. L. 107-273, div. A, title II, §207(b), Nov. 2, 2002, 116 Stat. 1780; Pub. L. 107-296, title XIII, §1322, Nov. 25, 2002, 116 Stat. 2297.)

#### REFERENCES IN TEXT

Level I of the Executive Schedule, referred to in subsecs. (a)(1) and (d)(1), is set out in section 5312 of this title.

Section 5757, referred to in subsec. (a)(2)(B), probably means the section 5757 of this title added by Pub. L. 107-273, relating to extended assignment incentive.

#### AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107-296, §1322(b)(1), inserted “or as otherwise provided under subsection (d),” after “under law.”

Subsec. (a)(2)(B). Pub. L. 107-273 substituted “5755, or 5757” for “or 5755”.

Subsec. (c). Pub. L. 107-296, §1322(b)(2), substituted “this section (subject to subsection (d)),” for “this section.”

Subsec. (d). Pub. L. 107-296, §1322(a), added subsec. (d). 1991—Subsec. (a). Pub. L. 102-77, §2(1)–(3), designated existing provisions as par. (1), substituted “cause the” for “cause to the”, and added par. (2).

Subsec. (b)(3). Pub. L. 102-77, §2(4), struck out par. (3) which read as follows: “Paragraph (1) shall not apply to an amount if, or to the extent that, it is attributable to a payment the authority for which would derive from section 4505a(d), 5753(e), or 5754(e).”

1990—Pub. L. 101-509 amended section generally, substituting provisions prohibiting cash payments to employees in excess of annual rate of basic pay payable for level I of Executive Schedule in a calendar year, for provisions authorizing adjustments in rates of pay, minimum or maximum rates of pay, and monetary limitations or allowances with respect to pay of certain Federal employees.

1982—Subsec. (a). Pub. L. 97-258 substituted “sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15” for “section 665”.

#### EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Pub. L. 107-273, div. A, title II, §207(c), Nov. 2, 2002, 116 Stat. 1780, provided that: “The amendments made by this section [enacting section 5757 of this title and amending this section] shall take effect on the first day of the first applicable pay period beginning on or after

6 months after the date of enactment of this Act [Nov. 2, 2002].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

#### [§ 5308. Omitted]

#### CODIFICATION

Section, added Pub. L. 91-656, §3(a), Jan. 8, 1971, 84 Stat. 1951, relating to pay limitation, was omitted in the general revision of this subchapter by Pub. L. 101-509.

#### SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

#### § 5311. The Executive Schedule

The Executive Schedule, which is divided into five pay levels, is the basic pay schedule for positions, other than Senior Executive Service positions and positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, to which this subchapter applies.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 459; Pub. L. 95-454, title IV, §§408(b)(1), 414(b)(1), Oct. 13, 1978, 92 Stat. 1173, 1178; Pub. L. 96-54, §2(a)(24), Aug. 14, 1979, 93 Stat. 382; Pub. L. 100-325, §2(h)(1), (2), May 30, 1988, 102 Stat. 582; Pub. L. 101-509, title V, §529 [title I, §104(c)], Nov. 5, 1990, 104 Stat. 1427, 1447.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2210.	Aug. 14, 1964, Pub. L. 88-426, § 302, 78 Stat. 415.

The words “There is hereby established” are omitted as executed. The word “offices” is omitted as included in “positions”. The words “Executive Schedule” are substituted for “Federal Executive Salary Schedule”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### AMENDMENTS

1990—Pub. L. 101-509 struck out “(a)” before “The Executive Schedule, which” and struck out subsec. (b) which read as follows:

“(1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director of the Office of Personnel Management shall determine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

“(2) For the purpose of this subsection, ‘executive level position’ means—

“(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

“(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

but does not include any Senior Executive Service position (as defined in section 3132(a) of this title) or any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.”

1988—Subsec. (a). Pub. L. 100-325, §2(h)(1), inserted reference to positions in Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

Subsec. (b)(2). Pub. L. 100-325, §2(h)(2), substituted “(as defined in section 3132(a) of this title) or any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service” for “, as defined in section 3132(a) of this title” in concluding provision.

1979—Subsec. (b)(1). Pub. L. 96-54 inserted “of the Office of Personnel Management” after “Director”.

1978—Pub. L. 95-454, §408(b)(1), inserted reference to Senior Executive Service positions.

Pub. L. 95-454, §414(b)(1), designated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

#### PLAN FOR AUTHORIZING EXECUTIVE LEVEL POSITIONS IN EXECUTIVE BRANCH; PRESIDENTIAL SUBMISSION TO CONGRESS

Section 414(b)(2) of Pub. L. 95-454 required President to transmit by Jan. 1, 1980, a plan to Congress for authorizing executive level positions in executive branch.

### § 5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

- Secretary of State.
- Secretary of the Treasury.
- Secretary of Defense.
- Attorney General.
- Secretary of the Interior.
- Secretary of Agriculture.
- Secretary of Commerce.
- Secretary of Labor.
- Secretary of Health and Human Services.
- Secretary of Housing and Urban Development.
- Secretary of Transportation.
- United States Trade Representative.
- Secretary of Energy.
- Secretary of Education.
- Secretary of Veterans Affairs.
- Secretary of Homeland Security.
- Director of the Office of Management and Budget.
- Commissioner of Social Security, Social Security Administration.

- Director of National Drug Control Policy.
- Chairman, Board of Governors of the Federal Reserve System.
- Director of National Intelligence.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 460; Pub. L. 89-670, §10(d)(1), Oct. 15, 1966, 80 Stat. 948; Pub. L. 91-375, §6(c)(12), Aug. 12, 1970, 84 Stat. 776; Pub. L. 93-618, title I, §141(b)(3)(A), Jan. 3, 1975, 88 Stat. 1999; Pub. L. 94-82, title II, §202(b)(1), Aug. 9, 1975, 89 Stat. 419; Pub. L. 95-91, title VII, §710(c), Aug. 4, 1977, 91 Stat. 609; Pub. L. 96-54, §2(a)(25)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96-88, title V, §508(c), (g), Oct. 17, 1979, 93 Stat. 692; Pub. L. 97-456, §3(d)(1), (5), Jan. 12, 1983, 96 Stat. 2505; Pub. L. 99-198, title XI, §1113(d), Dec. 23, 1985, 99 Stat. 1480; Pub. L. 99-260, §4(c), Mar. 20, 1986, 100 Stat. 49; Pub. L. 100-527, §13(c), Oct. 25, 1988, 102 Stat. 2643; Pub. L. 100-679, §11(a), Nov. 17, 1988, 102 Stat. 4070; Pub. L. 100-690, title I, §1003(a)(4)(A), Nov. 18, 1988, 102 Stat. 4182; Pub. L. 103-296, title I, §108(e)(1), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 105-277, div. C, title VII, §713(a)(1), Oct. 21, 1998, 112 Stat. 2681-693; Pub. L. 106-569, title X, §1002(a)(1), Dec. 27, 2000, 114 Stat. 3028; Pub. L. 107-296, title XVII, §1702(a)(1), Nov. 25, 2002, 116 Stat. 2313; Pub. L. 108-458, title I, §1015(a), Dec. 17, 2004, 118 Stat. 3664.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2211(a).	Aug. 14, 1964, Pub. L. 88-426, §303(a), 78 Stat. 416.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### CODIFICATION

Paragraph designation for the position added by Pub. L. 96-88 has been omitted in view of the deletion of all paragraph designations in this section by Pub. L. 96-54.

#### AMENDMENTS

2004—Pub. L. 108-458 inserted item relating to Director of National Intelligence.

2002—Pub. L. 107-296 inserted item relating to Secretary of Homeland Security.

2000—Pub. L. 106-569 inserted item relating to Chairman, Board of Governors of the Federal Reserve System.

1998—Pub. L. 105-277 inserted item relating to Director of National Drug Control Policy.

1994—Pub. L. 103-296 inserted item relating to Commissioner of Social Security, Social Security Administration.

1988—Pub. L. 100-690, §§1003(a)(4)(A), 1009, temporarily inserted item relating to Director of National Drug Control Policy. See Effective and Termination Dates of 1988 Amendments note below.

Pub. L. 100-679 inserted item relating to Director of Office of Management and Budget.

Pub. L. 100-527 inserted item relating to Secretary of Veterans Affairs.

1986—Pub. L. 99-260 struck out item relating to Special Assistant for Agricultural Trade and Food Aid.

1985—Pub. L. 99-198 inserted item relating to Special Assistant for Agricultural Trade and Food Aid.

1983—Pub. L. 97-456, §3(d)(5), substituted “United States Trade Representative” for “Special Representative for Trade Negotiations”.

1979—Pub. L. 96-88, §508(g), substituted “Health and Human Services” for “Health, Education, and Welfare” in item relating to the Secretary of Health and Human Services.